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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER TRAVON BRADLEY,

Defendant and Appellant.

E046061

(Super.Ct.No. RIF128566)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez,
Judge. Dismissed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and
Elizabeth A. Hartwig, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed on January 19, 2007, the Riverside County District Attorney's Office charged defendant and appellant Christopher Bradley and codefendant Vontel Avila Torres with six counts of second degree robbery under Penal Code section 211.¹ The information also alleged, as to all counts, that defendant and codefendant each "participated as a principal knowing that another principal in said offense was armed with a firearm," under section 12022, subdivision (d).

On March 28, 2007, defendant pled guilty to the six counts of robbery and admitted the firearm enhancements, without any plea agreement. Codefendant Torres also pled guilty.

On June 20, 2007, the trial court sentenced defendant to a total term of eight years in state prison. The sentence consisted of the low term of two years on count 1, plus the low term of one year for the section 12022, subdivision (d) enhancement. The court imposed consecutive terms of one year on counts 2, 3, and 4, and eight months for the enhancements on counts 2, 3, and 4. The court also imposed concurrent sentences of two years each on counts 5 and 6, and one year for each of the enhancements on counts 5 and 6, to be served concurrently.

On appeal, defendant contends that the sentence is unauthorized because the section 12022, subdivision (d), enhancements apply only to narcotics offenses. Defendant argues that the enhancement should have been imposed under section 12202, subdivision (a), instead. The People respond that defendant's appeal should be dismissed

¹ All statutory references are to the Penal Code unless otherwise specified.

because defendant failed to obtain a certificate of probable cause under section 1237.5.

We agree with the People, and for the reasons set forth below, we shall dismiss defendant's appeal.

I

STATEMENT OF FACTS²

Between 7:30 p.m. and 10:00 p.m. on February 14, 2006, defendant and two cohorts robbed five gas station convenience stores at gunpoint.

Around 7:30 p.m. on February 14, 2006, defendant and his cohorts robbed at gunpoint a cashier at a Shell gas station on Archibald Avenue in Ontario. They stole \$80 from the cash register, \$100 from a cash box and several boxes of Swisher Sweet cigars. The robbers all wore dark hooded sweatshirts and bandanas. The cashier saw white lettering on the front of the gunman's sweatshirt and white stripes at the elbows.

At approximately 8:08 p.m., the three robbers confronted at gunpoint another cashier at a Chevron gas station on Sixth Street in Norco. The robbers took money from the register and Durex condoms. The cashier also noted that the gunman wore a hooded sweatshirt which had white lettering on the front, and stripes at the elbow on each arm.

Thirty minutes later, around 8:45 p.m., the same three robbers reached a Mobile gas station on Eagle Glen Parkway in Corona. At gunpoint, they held up two clerks. The robbers took cash from the register and \$67 from a customer's wallet.

² The facts are taken from the preliminary hearing transcript.

While running away from the Mobile gas station, defendant dropped his driver's license in the parking lot; it was recovered and turned over to the police. The man who found the driver's license also gave police a description of the getaway vehicle, a silver Nissan Altima, and a partial license plate, "4WT."

Less than 10 minutes later, around 8:54 p.m., the three robbers held up a cashier at a Valero gas station on Cedar Avenue in Bloomington. At gunpoint, they took cash from the register and the cashier's personal cell phone. The robbers were seen getting into a Nissan Altima.

Defendant and his cohorts ended their crime spree around 10:00 p.m. at a 7-Eleven gas station and market on Cedar Avenue in Bloomington. They robbed the cashier of cash and a 20-pack of Bud Light bottles at gunpoint.

By 11:00 p.m., police officers were waiting when a cohort, Torres, drove up to the home of defendant's parents in Azusa, and let defendant out of the Nissan Altima, license plate number "4WLT143." Police took defendant into custody at the home, which was the address on defendant's driver's license that was dropped at the Mobile gas station. Inside defendant's bedroom, officers found cash, Durex condoms, Swisher Sweet cigars, and a dark hooded sweatshirt with distinctive stripes on the front and elbows.

Other officers followed the Nissan Altima to a second residence in Azusa, the address where the car was registered to Torres's mother. Inside the car, officers found black knit gloves, Swisher Sweet cigars, and a cell phone.

II

ANALYSIS

Defendant's sole contention on appeal is that the trial court erred in imposing sentence enhancements under section 12022, subdivision (d), instead of section 12022, subdivision (a)(1).³ The People do not address the merits of defendant's argument but instead respond that defendant is estopped from raising this issue because he failed to obtain a certificate of probable cause.

A certificate of probable cause is a prerequisite to an appeal from a judgment on a plea of guilty or nolo contendere unless the appeal is based solely on grounds occurring after entry of the plea, which do not challenge its validity. (Cal. Rules of Court, rule 8.304(b)(1); see § 1237.5.) In determining whether the requirements of section 1237.5 apply with regard to the sentence imposed following a plea, our Supreme Court has directed that we are not to look to the timing of the events being appealed, but rather consider the substance of the appeal—that is, what defendant is challenging. (*People v. Buttram* (2003) 30 Cal.4th 773, 781-782; *People v. Panizzon* (1996) 13 Cal.4th 68, 76 (*Panizzon*).)

In this case, the information charged defendant and Torres with six counts of robbery under section 211. As to all counts, the information further alleged section 12022, subdivision (d), *not section 12022, subdivision (a)*, firearm enhancements.

³ Section 12022, subdivision (d) enhancements apply to drug-related offenses, while section 12022, subdivision (a) enhancements apply to felonies. Here, defendant and his cohorts were involved in robberies, not drug-related offenses.

Defendant pled guilty, *as charged*, without a plea agreement. Defendant, however, executed a felony plea form; it indicated that the custody term shall not be more than 13 years 4 months. Although defendant pled guilty to section 12022, subdivision (d), enhancements, defendant argues on appeal, without obtaining a certificate of probable cause, that his enhancements should have been imposed under section 12022, subdivision (a). Defendant contends that his sentence was unauthorized under section 12022, subdivision (d).

In *People v. Lloyd* (1998) 17 Cal.4th 658, the California Supreme Court explained that: “In *Panizzon*, we recognized that, even if it purportedly challenges the sentence only, a defendant’s appeal from a judgment of conviction entered on a plea of guilty . . . must be dismissed in the absence of a statement of grounds by the defendant and a certificate of probable cause by the trial court if, *in substance*, it challenges the validity of the plea. [Citation.] It does so if the sentence was part of a plea bargain. [Citation.] It does not if it was not [citation]” (*Id.* at p. 665.)

Defendant argues that an unauthorized sentence may be corrected at any time. But in *Panizzon*, our high court disagreed. The court explained: “[I]nvolving the principle that ‘[a]n appellate court may “correct a sentence that is not authorized by law whenever the error comes to the attention of the court”’ [citation], defendant argues that California decisional law has long recognized the necessity of affording judicial review where, as here, a sentence is challenged as invalid or in excess of the court’s jurisdiction. We disagree. [¶] Appellate courts have relied upon the principle to which defendant refers in

allowing habeas corpus review of a claim or sentencing error amounting to an excess of jurisdiction when a defendant has delayed in raising the issue [citation] and in holding that an unauthorized sentence is no bar to the imposition of a proper, even if more severe, judgment thereafter [citation]. These authorities, however, do not support appellate review of a sentence disproportionality claim where, as here, the sentence has been negotiated as part of a plea bargain and is not in excess of the maximum statutory penalty. Indeed, considerations of fairness weigh against the availability of review since the absence of a fully developed factual record in a plea bargained case is likely to place the People at a significant disadvantage in meeting such a claim.” (*Panizzon, supra*, 13 Cal.4th at p. 88, fn. omitted.)

While the instant case does not involve a sentence disproportionality claim, it does involve a challenge to a sentence under section 12022, subdivision (d), to which defendant pled guilty. Thus, even though defendant claims his sentence is unauthorized he nevertheless was required to file a certificate of probable cause, and his appeal must be dismissed due to his failure to do so. (*Panizzon, supra*, 13 Cal.4th at p. 89.)

III

DISPOSITION

Defendant's appeal is dismissed for failure to file a timely certificate of probable cause.

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/s/ McKinster
Acting P.J.

We concur:

/s/ Richli
J.

/s/ King
J.